

1 **BOARD OF PERSONNEL APPEALS**  
2 **PO BOX 6518**  
3 **HELENA MT 59604-6518**  
4 **Telephone: (406) 444-2718**  
5 **Fax: (406) 444-7071**  
6

7 STATE OF MONTANA  
8 BEFORE THE BOARD OF PERSONNEL APPEALS  
9

10 IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE 3-2009:  
11

12 INTERNATIONAL BROTHERHOOD OF )  
13 TEAMSTERS LOCAL NO. 2 )  
14 )

15 Complainant, )  
16 )

17 vs. )

18 ANACONDA-DEER COUNTY, REBECCA )  
19 GUAY, CEO )  
20 )

21 Defendant, )  
22 )  
23 )  
24 )

RECOMMENDED ORDER  
OF DISMISSAL

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27 **I. INTRODUCTION**  
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30 On August 28, 2008, International Brotherhood of Teamsters Local No. 2, (Teamsters, or  
31 Union), filed an unfair labor practice charge with the Board of Personnel Appeals alleging  
32 that Rebecca Guay, in her capacity as the Chief Executive Officer of Anaconda-Deer  
33 Lodge County, (ADLC), violated 39-31-201, 39-31-401(1) and 39-31-401(5) MCA by  
34 refusing to abide by the decision of a Labor-Management Committee convened to resolve  
35 the grievance of Linda Forkan, a member of the Teamsters' bargaining unit. Bill Rowe,  
36 Business Representative for the Teamsters, filed the complaint on behalf of the Union. On  
37 September 5, 2008, ADLC filed its response to the charge denying any violation of  
38 Montana law.  
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41 Pursuant to Section 39-31-405 (1) John Andrew was appointed by the Board of Personnel  
42 Appeals to investigate the charge. During the course of the investigation information was  
43 exchanged between the investigator and the parties.  
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47 **II. FINDINGS AND DISCUSSION**  
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49 This complaint concerns a grievance filed by the Teamsters against ADLC under the terms  
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1 of an existing collective bargaining agreement (CBA). The correspondence and  
2 chronology of events in this matter are fairly well laid out in exhibits submitted by ADLC in  
3 its response to the complaint. In abbreviated summary, the documents submitted by  
4 ADLC establish that Linda Forkan had been employed as a Justice Court Clerk since  
5 January of 2003. In March of 2008, Ms. Forkan was laterally transferred to an equivalent  
6 position in the Clerk and Recorder Department. There was no loss of pay, seniority or  
7 other benefits as guaranteed in the CBA and/or ADLC policy. The transfer was not  
8 disciplinary in nature but appears in significant part to be the result of a contentious  
9 working relationship between Ms. Forkan and the Judge of the Justice Court.  
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11  
12 Ms. Forkan did not agree with the transfer so on March 6, 2008, she filed a grievance over  
13 the transfer. On March 26, 2008, Ms. Forkan also wrote to Rebecca Guay, expressing her  
14 "intent to bid on the Justice Court Clerk vacancy" , Ms. Forkan's previous position.  
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16  
17 Further communication ensued between the union and ADLC as they wrestled over what  
18 portion or portions of the CBA may have been violated. Ultimately, pursuant to the CBA, a  
19 two/two committee was convened to resolve the grievance. The committee met on July  
20 24, 2008, and issued its findings that same day. The committee found no violation of  
21 Article II of the CBA as no discharge had actually occurred. The committee also denied the  
22 grievance pertaining to the transfer holding that the CBA contained no transfer language.  
23 Finally, the committee found that "it believes that the County failed to follow Section 8 Art  
24 D. The Committee upholds the grievance on seniority bidding practices".  
25

26  
27 Although the Teamsters had clearly asked that the remedy for Ms. Forkan be  
28 reinstatement to her position in the Justice Court the written opinion of the committee did  
29 not specify that relief. In oral communication with the investigator two members of the  
30 committee stated that reinstatement was orally directed to ADLC. ADLC does not agree  
31 that reinstatement was directed. In short, the written decision of the panel is arguably  
32 incomplete in its remedy. Whether a remedy was directed, and what it was to be is in  
33 contention. Thus, one question before the Board of Personnel Appeals is whether or not  
34 ADLC failed to comply with a final and binding decision of the committee. The  
35 recommendation of this investigator is that the Board not resolve a factual dispute as to  
36 what was intended by the committee, or what may or may have not been orally conveyed  
37 by the committee to the employer and its agents. Rather a more appropriate action would  
38 be for the committee to specify in writing what, if any, relief is directed.  
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42 The above said, whatever relief may or may not have been directed by the committee is  
43 not the only disagreement between ADLC and the union. In its response to the charge  
44 ADLC points out that Ms. Forkan submitted an "intent to bid" on a job opening. The issue  
45 of whether a job was or was not bid is one of contract interpretation. Timeliness of the  
46 grievance also is a possible dispute raised by ADLC as are the qualifications for the  
47 position in the Justice Court. All of these issues are clearly ones of contract interpretation  
48 and are resolved by determining the plain meaning of the words of the CBA, the  
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1 bargaining history, past practice, intentions of the parties and whatever means the  
2 committee might deem appropriate to interpret the contract. All of this should happen in  
3 the context of the CBA grievance procedure. To that end, the employer has expressed a  
4 willingness to resolve any outstanding issues as well as any remedies that might be  
5 directed.  
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8 The Montana Supreme Court has approved the practice of the Board of Personnel  
9 Appeals using Federal Court and National Labor Relations Board precedent as guidelines  
10 in interpreting the Montana Collective Bargaining for Public Employees Act as the State  
11 act is so similar to the Federal Labor Management Relations Act, State ex rel. Board of  
12 Personnel Appeals v. District Court, 183 Mont 223, 598 P.2d 1117, 103 LRRM 2297;  
13 Teamster's Local Union No. 45 v. State ex rel. Board of Personnel Appeals, 195 Mont 272,  
14 635 P.2d 1310, 110 LRRM 2012; City of Great Falls v Young (Young III) 211 Mont 13, 686  
15 P.2d 185, 119 LRRM 2682.  
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18 In ULP 43-81, William Converse v Anaconda Deer Lodge County and ULP 44-81 James  
19 Forsman v Anaconda Deer Lodge County, August 13, 1982, the Board of Personnel  
20 Appeals adopted National Labor Relations Board precedent set forth in Collyer Insulated  
21 Wire, 192 NLRB 387, 77 LRRM 1931, deferring certain unfair labor practice proceedings  
22 to an existing negotiated grievance/arbitration procedure.  
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25 Here the employer has expressed its willingness to proceed forward with the grievance  
26 process, including referring the matter back to the committee for clarification of its decision  
27 and/or resolution of the other outstanding issues as well. To allow that process to be  
28 completed carries out the purpose of the CBA and is in the best interest of the Board of  
29 Personnel Appeals as well. It is not generally for the Board to interpret the actual  
30 language of a CBA and no allegations in this complaint necessitate that the Board do so.  
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### 33 **III. RECOMMENDED ORDER**

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35 It is hereby recommended that the above matter be dismissed. To eliminate the risk of  
36 prejudice to any party the Board of Personnel Appeals retains jurisdiction over this matter  
37 for the purpose of entertaining an appropriate and timely motion for further consideration  
38 upon a proper showing that either the dispute has not, within a reasonable time, been  
39 resolved pursuant to the parties' negotiated grievance/arbitration procedure; or the  
40 grievance/arbitration proceedings have not been fair and regular or have reached a result  
41 which is repugnant to the Montana Collective Bargaining for Public Employees Act.  
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### 44 **SPECIAL NOTICE**

45  
46 Exceptions to this Recommended Order may be filed within twenty (20) days of service  
47 thereof. If no exceptions are filed, this Recommended Order shall become the Order of  
48 the Board of Personnel Appeals. Address exceptions to the Board of Personnel Appeals,  
49 P.O. Box 6518, Helena, Montana 59604-6518.  
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3 Dated this 8<sup>th</sup> day of October 2008.  
4  
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6  
7 BOARD OF PERSONNEL APPEALS  
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10  
11 By: \_\_\_\_\_/S/\_\_\_\_\_  
12 John Andrew, Investigator  
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17 CERTIFICATE OF SERVICE  
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19 The undersigned does hereby certify that a true and correct copy of the foregoing  
20 Recommended Order of Dismissal was served upon the following on the \_\_\_\_\_ day  
21 of \_\_\_\_\_, 2008, postage paid and addressed or delivered as indicated:  
22  
23  
24

25 BILL ROWE  
26 TEAMSTERS LOCAL 2  
27 3345 HARRISON  
28 BUTTE MT 59702  
29

30 REBECCA GUAY CEO  
31 ANACONDA DEER LODGE COUNTY  
32 800 SOUTH MAIN  
33 ANACONDA MT 59711  
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